IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 135 OF 2005

Sai Shraddha Co-op. Housing
Society Ltd. & Anr. .. Petitioners

V/s

State of Maharashtra & Ors. .. Respondents

AND

WRIT PETITION NO. 136 OF 2005

Shivnagar Co-op. Housing
Society Ltd. & Ors. .. Petitioners

V/s

State of Maharashtra & Ors. .. Respondents

Mr.S.G. Surana for the Petitioners.

Mr.D. D'Mello, A.G.P. for Respondents Nos.1 and 2.

Mr.V.A. Thorat, Advocate General, for Respondents Nos.5 to 7.

Mr.Brenda D'Souza i/b Utangale & Co. for Respondent No.4.

CORAM : H.L. GOKHALE &
S.C. DHARMADHIKARI, JJ.

DATE : 4TH MARCH 2005

P.C. :

1. Heard the learned counsel for the parties.

2. These two petitions seek to challenge the demand notice dated 3rd January 2005 issued by Respondent No.7, who is an officer of Respondent No.5 - MHADA. It is submitted that this demand is excessive and illegal and ought to be interfered.

3. The short facts leading to both these petitions are these.

. The 1st Petitioner in both these petitions are the societies of the slum dwellers whereas the 2nd Petitioner in Writ Petition No.135 of 2005 and the 4th Petitioner in Writ Petition No.136 of 2005 are Developers who are developing the property for the purposes of rehabilitation of the slum dwellers as per the Scheme evolved by the State Government and MHADA. In the first matter, the Developer was allotted a parcel of land for a period of 18 months for providing the transit accommodation while shifting the slum dwellers whereas in the second matter, the period was 3 years. The slum dwellers were situated on the land belonging to

MHADA and in the rehabilitation scheme, they were to be rehabilitated in the buildings to be constructed.

4. It has so happened that the Schemes and the rehabilitation could not take place within the initial period of 18 months and 3 years in the two respective cases. The Petitioners have their own reasons as to why the Schemes could not be completed within the time stipulated and in fact they blame MHADA, its various authorities and officers for the delay that has been caused. They pointed out that the concerned parcels of land were allotted at a substantially concessional rate for the purposes of the transit arrangement. Thus reliance is placed on MHADA's letter dated 13th July 1999 wherein in the first case for the period of 18 months, the ground rent was fixed at Rs.2002/- per year. The parcel of land is quite large in the first case, i.e. 6700 sq.m., and surely the rent could not be such a concessional rate. It is submitted that this was obviously because slum dwellers from MHADA's property were to be shifted into the new buildings to be constructed.

5. The submission of the Petitioners is that inasmuch as MHADA and its officers were responsible for the delay caused, this rate which was agreed earlier

ought to be continued for the further period and no more demand should be made beyond that rate. Alternatively, however, it is submitted that a meeting was held before the officers of the Government. The first meeting was on 3rd January 2002 before the Minister (Housing) where the President of MHADA and various officers of State Government were present. It was agreed therein that until 1st May 2002, the concessional rate should be charged as the allotment of land was for the purposes of transit camps. Thereafter it should be Rs.300/- per tenement per month. Alternatively, it is submitted that the same should be the rate inasmuch as the officers of MHADA participated in that proceeding. Thereafter, it is submitted that in view of further representations, another meeting was held before the Principal Secretary (Housing) where again senior officers of MHADA were present and in that meeting it was agreed that the concessional rate be extended by two years and a Committee of three officers be appointed to decide what should be the appropriate rate. This meeting was held on 29th December 2004 and it is less than a week thereafter that a huge demand has been made on 3rd January 2005 going into crores of rupees. Mr.Surana, learned counsel for the Petitioners, submits that firstly it is unfair to make such a demand inasmuch as it is the slum dwellers from MHADA’s property who are to

be rehabilitated. Secondly, the concessional rate was agreed in the initial document. Thereafter, further concessional rate was agreed in a meeting where the Minister (Housing) was present, and lastly in a meeting before the Principal Secretary (Housing), a mechanism to arrive at appropriate rate was arrived at. Within one week thereafter if MHADA demands more than crores of rupees by way of occupation charges, it is highly unfair, exorbitant, unjust and illegal.

6. Mr.Thorat, learned Advocate General appearing for MHADA, on the other hand, submits that it is a property owned by MHADA. All that the initial contract provided was that at a concessional rate the land will be made available for the transit accommodation. In the first case it was for a period of 18 months and in the second case it was for a period of 3 years. Undoubtedly, a concessional rate was agreed because the slum dwellers were on MHADA's land. However, the project was to be completed within a certain time. MHADA does not accept that it is responsible for the delay. After this initial period, like any other land owner, MHADA is entitled for appropriate return from the property. Any meeting before the Minister (Housing) or before the Principal Secretary (Housing) cannot bind statutorily an authority which has right under the

statute to claim appropriate return for the property. He submits that all that MHADA is seeking is a return as per the ready reckoner and nothing in excess thereof. In his submission, therefore, the demand raised by MHADA should not be interfered with.

7. The learned Advocate General, however, is fair enough to accept that may be the officers of MHADA appeared in the meetings held before the Minister (Housing) as well as the Principal Secretary (Housing) and, therefore, it is possible that some impression must have been formed by the Petitioners. At the same time, he submits that it is an obligation of MHADA to see to it that proper return on its land is received. He, therefore, offers that a senior officer of MHADA will afford a hearing to the Petitioners wherein they should appear and ventilate all their grievances whereafter the officer will decide what should be the appropriate rate to be charged for the period for which the demand notice has been raised.

8. Looking to the totality of the factors, in our view, suggestion made by the learned Advocate General is quite a fair one. MHADA will afford a hearing to the Petitioners. It will give them a forum of MHADA itself wherein they will get an opportunity to point out as to

why the revision should not be made. The decision undoubtedly will bind MHADA. In the circumstances, instead of going into the submissions raised by the Petitioners in these petitions which will involve determination on various factual aspects, in our view, the Petitioners should approach before the concerned officer of MHADA and ventilate their grievances. The learned Advocate General points out that one Mr.Dhole, Deputy Chief Executive Officer of MHADA, who is a Senior Engineer, will look into the Petitioners' grievances as in an earlier matter i.e. Writ Petition No.788 of 2002 and, therefore, instead of three member committee appointed by the State Government, it will be advisable that the representatives of the Petitioners appear before Mr.Dhole and he will determine as to what should be the appropriate amount to be demanded by the Respondents. We accept this submission and grant liberty to the Petitioners to appear before the officer concerned. In view of the fact that the Respondents themselves have shown willingness to look into the submissions of the Petitioners before a senior officer of MHADA, we do not think that we should interfere through a writ petition and, therefore, both these petitions are rejected.

9. All the submissions of both the parties will be

available to them at the time of hearing before the officer and the officer is expected to hear them and pass a reasoned order.

10. The Respondents will not enforce the demand notice during the pendency of the determination.

11. Inasmuch as the office premises of the Developers have been attached by MHADA, Mr.Surana states that the amount, which would be payable as per the Minister's decision of 3rd January 2002, will be deposited with MHADA within 15 days. This, according to him, comes to Rs.16,32,000/-. On deposit of this amount, the attachment of the office premises of the Petitioners will stand lifted.

12. Mr.Surana further states that as far as the demand in Writ Petition No.136 of 2005 is concerned, as per the Minister's decision of 3rd January 2002, the amount comes to Rs.77,52,000/-. He states that the Petitioners will deposit Rs.10,00,000/- per month and clear this amount after the initial deposit of Rs.16,32,000/- in Writ Petition No.135 of 2005. We accept this statement.

13. The deposit and receipt both will be without

prejudice.

14. In the event there is any default on the part of the Petitioners in making this payment of Rs.10,00,000/- per month and clear the amount of Rs.77,52,000/-, it would be open to the Respondents to reattach the premises.

15. In Writ Petition No.135 of 2005, Mr.Surana states that part of the land in occupation is no longer required by the Developer and the society concerned. He states that the Petitioners will hand over possession thereof to the Respondents. He may do so within one week from today. That will help the Petitioners to get this future liabilities reduced.

(H.L. GOKHALE, J.)

(S.C. DHARMADHIKARI, J.)